

Legislative Audit Division

State of Montana



Report to the Legislature

October 2006

Financial-Compliance Audit

For the Two Fiscal Years Ended June 30, 2006

Department of Revenue

This report contains seven recommendations to the department. Issues addressed in the report include:

- ▶ Financial Accountability
 - Reconciliation controls
 - Unrecorded revenue and expenditures
 - Debt collection program
- ▶ Improving tax compliance for:
 - Combined oil and gas severance taxes
 - Corporation license taxes
 - Individual income taxes
- ▶ Noncompliance with state statutes

Direct comments/inquiries to:
Legislative Audit Division
Room 160, State Capitol
PO Box 201705
Helena MT 59620-1705

06-14

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Findings and Recommendations

Corporation License Taxes

The department does not have adequate procedures to ensure all new corporations, limited partnerships, limited liability companies, and limited liability partnerships file timely tax returns or the Secretary of State is notified, as required by section 15-31-523, MCA.

Section 15-31-603, MCA, requires the Secretary of State to provide a list of all new corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, to the department each month. The department can use this list, required since October 2001, to identify and communicate tax reporting responsibilities to potentially new taxpayers and to identify entities that may not be paying their tax liabilities. The department is required by section 15-31-523, MCA, to report corporation license tax nonfilers or delinquent filers to the Secretary of State so the suspension, forfeiture, or dissolution of corporate rights provided in law can be made.

We observed the department's electronic comparison of the Secretary of State's information to IRIS data for the months of March and June 2006. Department personnel electronically compare the names and addresses of new foreign and domestic corporations from the information electronically provided by the Secretary of State, but exclude the other entities. The department could expand its ability to identify potentially new taxpayers by comparing all entities provided by the Secretary of State. For example, the March 2006 information originally provided by the Secretary of State contained 1,888 entities, of which 594 were new foreign and domestic corporations. Department personnel told us that when the corporation license tax was implemented into IRIS, the only functionality for the comparison that was programmed was what existed for the previous system, which was limited to new foreign and domestic corporations.

If the name and address on the Secretary of State's information nearly matches IRIS data, the electronic comparison requires department personnel to review the information from both sources to

Findings and Recommendations

determine if there is a match or not. If there is any question whether the information matches, department personnel treat the entity as if it does not match an entity on IRIS. This process could work more efficiently if the Secretary of State gathered the taxpayer ID and provided it to the department with the other entity information.

The department does not notify the Secretary of State when a corporation does not file or is delinquent in filing, unless department personnel know the corporation is currently operating. Department personnel do not check with the Secretary of State or its website to see whether the corporation is active. Department personnel indicated that past history has shown most corporations that do not file returns have already voluntarily dissolved or are no longer active corporations. In addition, when returns come into central cashiering, they can get backed up and may not be entered into the system right away. The department should develop procedures to ensure the Secretary of State is notified of nonfilers and delinquent filers in a timely manner.

Recommendation #5

We recommend the department:

- A. Work with the Secretary of State to obtain the information necessary for an efficient comparison of new entity information.**
- B. Compare information to department records for all of the entities the Secretary of State reports.**
- C. Implement more effective procedures for identifying and reporting corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.**

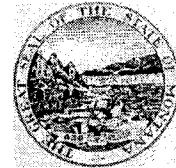
Individual Income Taxes

The department's individual income tax booklet for tax year 2005 was inconsistent with one state law and did not disclose requirements from four state laws that could either benefit taxpayers or facilitate taxpayer compliance.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

October 19, 2006

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OCT 19 2006

LEGISLATIVE AUDIT DIV.

Scott A. Seacat, Legislative Auditor
Legislative Audit Division
Room 160, State Capitol
P.O. Box 201705
Helena, MT 59620-1705

Dear Mr. Seacat:

We appreciate the opportunity to respond to the recommendations raised in the Financial Compliance Audit Report of the Montana Department of Revenue for the fiscal years ended June 30, 2005 and 2006. Our response to the recommendations included in the audit report is as follows:

Recommendation #1

We recommend the department implement controls to ensure daily reconciliations of receipts to amounts recorded on its taxpayer systems are complete and accurate.

Concur. The Processing and Retention Operations (PRO) area has already started making changes to comply with this recommendation. We have improved our form layouts for reconciliation to SABHRS and reconciliation for deposit collections. The new form layout contains the necessary fields to track payment information received from various sources and tracks daily and month-to-month reconciliations.

A quality assurance step has since been implemented in which the team lead and unit manager verify totals on a weekly and monthly basis and ensure the accuracy and completion of reports. The cashiering unit will also work with the accounting staff in the Citizen Services and Resource Management Division for a periodic review of the daily reconciliations. This will provide an independent review of the process and a means to recommend any improvements.

A daily checklist for money not reconciled has since been created so staff will know the appropriate steps to locate and/or correct discrepancies. This process will supplement the quality assurance step previously described.

Recommendation #4

We recommend the Department of Revenue work with the Board of Oil and Gas Conservation to develop and implement procedures for cross-matching oil and gas production and sales data to ensure all oil and gas severance taxes owed are reported or assessed in accordance with state law.

Partially Concur. The department agrees to work with the Board of Oil and Gas Conservation (BOGC) on the development and implementation of a process to systemically cross-match BOGC well data with department tax data. To accomplish this, the department will: 1) work with BOGC on the development of the data requirements to conduct the cross-match; 2) enter into an MOU with BOGC which will contain the data requirements, timelines and responsibilities; and 3) work with the department's programming staff to develop electronic non-filer and/or missing lease letters. It is anticipated this process will be in place by the end of 2007.

The audit noted the department was not complying with the provision of 15-36-313 (1), MCA, which requires the immediate issuance of an estimated tax assessment for operators who have failed to file an oil and gas production tax return. The department believes that while estimated tax assessments are a useful enforcement tool, there are more efficient and effective ways to enforce compliance. These other enforcement tools include issuing administrative subpoenas and orders to show cause for non-filing. The department intends to continue to use estimated tax assessments when appropriate, but will be focusing on enforcement by using these other tools. To specifically address the audit findings, the department will seek legislation to strike the requirement to immediately issue an estimated assessment. The proposed legislation will continue to give the department the authority to issue estimated assessments when appropriate.

Recommendation #5

We recommend the department:

- A. Work with the Secretary of State to obtain the information necessary for an efficient comparison of new entity information.

Concur. The department is working with the Secretary of State in order to receive approximately seven additional files which will include data the department has been missing. This process is limited to an initial comparison by name only. In order to make this an efficient process; however, the Secretary of State would need to require a taxpayer identification number; i.e., federal employer identification number or social security number which they do not currently require. Otherwise, the comparison process has marginal value.

In the June 2006 Performance Audit titled "Improving Taxpayer Compliance in Montana Through Audit Efforts" the Legislative Auditor recommended that the department:

Establish priorities for achieving audit goals and objectives, and more effectively deploy audit resources by directing audit activities. The department will continue to work with data provided by the Secretary of State. As long as SSN/FEIN numbers are not required by the legislature or the Secretary of State; however, this data will likely have marginal value and will not be assigned as high a priority for compliance use as other data that can be cross-matched on a more efficient and effective basis.

- B. Compare information to department records for all of the entities the Secretary of State reports.

Concur. The department will continue to compare department records with the information the Secretary of State reports. However, as previously mentioned, this is currently an inefficient process as there is not a taxpayer identification number included in these reports. The department will work with the Secretary of State's office to see if they can revise their process to capture a taxpayer identification number.

- C. Implement more effective procedures for identifying and reporting corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.

Concur. The department will work toward implementing more effective procedures to identify and report corporation license tax non-filers and delinquent filers to the Secretary of State as required by state law. As previously described this process is limited and inefficient without a common taxpayer identification number to compare data against. A common denominator is necessary to make this exchange of information a worthwhile exercise.

Recommendation #6

We recommend the department:

- A. Comply with section 15-30-112, MCA, concerning the income limitation of dependents other than taxpayers' children.

Concur. The \$800 income limitation has been included in the instructions within the 2006 individual income tax booklet to comply with current law. The department will seek legislation to apply the inflation factor to the \$800 income limitation in future tax years to be consistent with how the department applies the inflation factor to the exemptions provided for in this section of law.

- B. Improve the tax booklet by including all information affecting individual income tax computations contained in state law.

Concur. Sections 15-30-105(2), 15-30-121(1)(i), and 15-30-106, MCA, identified in the audit as laws not included in the 2005 individual income tax booklet have been included in the 2006 tax year booklet. The department is reviewing what can be done to improve



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TO THE
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FINANCIAL-COMPLIANCE AUDIT

Department of Revenue
For the Two Fiscal Years Ended
June 30, 2008

DECEMBER 2008

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DIVISION

08-14

the administration of the tax laws, as discussed below. Our office also recommended during the performance audit "Improving Montana's Opencut Mine Permitting Process" (08P-04), that the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Notification of Nonfilers and Delinquent Filers

The department does not have adequate procedures to notify the Secretary of State of all corporation license tax nonfilers and delinquent filers, as required by section 15-31-523, MCA.

If a corporate license tax is not paid or if a return is not filed 11 months after the date of delinquency, section 15-31-523, MCA, requires the department to transmit the name of the corporation to the Secretary of State so the public can be notified the corporate powers, rights, and privileges of domestic corporations are suspended and the rights of foreign corporations to do intrastate business in this state are forfeited. If any domestic corporation fails for five consecutive years to either file a return or to pay the corporation license tax, this statute requires the department to notify the corporation by mail that the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within 60 days. If the corporation does not file all delinquent reports and pay all delinquent corporation license taxes, the statute requires the department to certify this fact to the Secretary of State, the corporation be dissolved, and the public notified of the corporation's dissolution.

As discussed in the prior audit, the department does not notify the Secretary of State when a corporation does not file or is delinquent in filing, unless department personnel know the corporation is currently operating in Montana and refuses to file a corporation license tax return. Department personnel do not check with the Secretary of State or its website to see whether the corporation is active. Department personnel indicated that the benefit of trying to comply with this statute is minimal, as past history has shown most corporations that do not file returns have already voluntarily dissolved or are no longer active. They also were concerned about the potential risk of suspending a corporation that had filed and the related cost of time to correct such an error. Department personnel estimated the cost to the department of complying with this law is about \$13,000 and the cost to the Secretary of State is about \$24,000 for computer system enhancements.

RECOMMENDATION #6

We recommend the department report corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.

Board of Review Meetings

The Board of Review does not meet quarterly, as required by section 30-16-302(3), MCA.

The legislature established a Board of Review in section 30-16-302, MCA, to provide policy direction to the Department of Revenue in designing and recommending to the legislature implementation of a plan for a business registration and licensing system and in the establishment and operation of that system, the One-Stop Licensing Program. State law requires the board include the directors of the Departments of Agriculture, Labor and Industry, Environmental Quality, Livestock, Revenue, Justice, and Public Health and Human Services; a member appointed by the President of the Senate; and a member appointed by the Speaker of the House. If an agency that is not a member of the Board of Review requests inclusion in the streamlined registration and licensing plan as provided in state law, that agency's director must be appointed to the board by the Governor. The Governor must appoint a presiding officer from among the board members.

Section 30-16-302(3), MCA, requires the board to meet at the call of the presiding officer, who is the director of the Department of Revenue, at least once each calendar quarter. The board met twice in each fiscal year 2004-05, 2005-06, and 2006-07 and three times in fiscal year 2007-08. One-Stop Licensing Program personnel told us the meeting dates are established after taking into consideration the board members' schedules and whether current issues warrant a meeting.

RECOMMENDATION #7

We recommend the department director call meetings of the Board of Review as required by state law.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

B-3

November 7, 2008

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LEGISLATIVE AUDIT DIV.

Tori Hunthausen, Legislative Auditor
Legislative Audit Division
Room 160, State Capitol
P.O. Box 201705
Helena, MT 59620-1705

Dear Ms. Hunthausen:

Thank you for the opportunity to respond to the recommendations raised in the Financial-Compliance Audit Report of the Montana Department of Revenue for the fiscal years ended June 30, 2007 and 2008. Our response to the recommendations raised in the report is as follows:

Recommendation #1

We recommend the department accrue liabilities for metal mines license tax allocations to counties in accordance with state law and accounting policy.

Concur. Prior to the change in statute requiring bi-annual payments of the metal mines license tax, rather than annual payment, an accrual of revenues and the related payable to counties at fiscal year-end was not necessary. Although the department has consistently accrued estimated revenues and distributed the metal mines license tax to counties when due, the department concurs with the recommendation that an accrual of this payable should be recorded at fiscal year-end.

The department has since modified its work plan at fiscal year-end to ensure an accrual is recorded, and as the audit report indicates, the department did record this obligation for the fiscal year ended June 30, 2008.

Recommendation #2

We recommend the department properly classify current and prior year revenue activity, liability and fund balance accounts, and fiscal year for budgetary transactions in accordance with state law and accounting policy.

Tori Hunthausen
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November 7, 2008

Recommendation #5

We recommend the department revise procedures to ensure excess vacation leave is properly calculated and used by employees or forfeited in accordance with state law.

Concur. During the legislative audit a calculation error was found that caused seven employees to accumulate more vacation leave than state law allows. The department relied on information included in the leave accrual reports that was based on pay period ending dates, while the annual leave policy dates are based on the calendar year. These differences lead to misinterpretation of the information. As well, it was determined employee information provided through the Department of Administration's DocuAnalyzer program was inaccurate.

The department has since resolved these differences by adjusting the leave balances of the affected employees to become compliant with state policy. The department has also revised procedures to ensure excess vacation leave is calculated properly by implementing a process to manually verify the leave calculations. The department is working with the Department of Administration to improve the DocuAnalyzer model and to redesign the educational materials provided to agencies. This information is to be presented at the December SABHRS users meeting.

Recommendation #6

We recommend the department report corporation license tax nonfilers and delinquent filers to the Secretary of State as required by state law.

Concur. The department will continue to review and notify the Secretary of State of corporations that have not paid or filed a return as required by law to the best of our ability. As indicated in our response to the prior audit, to effectively meet the requirements of the law, the Secretary of State would need to require a taxpayer identification number; i.e. federal employer identification number or social security number, which they do not currently require. With this information the department can effectively match the Secretary of State information with tax information. The department anticipates requesting legislation that would require taxpayer identification numbers be provided to the Secretary of State.

Recommendation #7

We recommend the department director call meetings of the Board of Review as required by state law.

Concur. Meetings of the One-Stop Board of Review have been called in the past by taking into consideration schedules of the board members and whether current issues warranted a quarterly meeting. This practice did not always cause a meeting to convene each calendar quarter as state statute dictates. The department recognizes



A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Improving Montana's Opencut Mine Permitting Process

*Department of
Environmental Quality*

JUNE 2008

LEGISLATIVE AUDIT
DIVISION

08P-04

Facilitating Collection Of The Resource Indemnity And Groundwater Assessment Tax

Our third objective was to determine whether controls are in place to assure opencut mining operators are paying the Resource Indemnity and Groundwater Assessment Tax (RIGWAT). Opencut mining operators are required to pay RIGWAT, which is a major revenue source for funding the Opencut Program. Section 15-38-102, MCA, states the legislature's policy for the Resource Indemnity Trust is to indemnify the state for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. Operators are required to pay an annual tax of \$25, plus a 0.5 percent tax on the gross value of product mined in excess of \$5,000. The Department of Revenue (DOR) is responsible for collecting the tax. Revenues from RIGWAT account for 92 percent of the funding for the Opencut Mining Program.

Not All Permitted Opencut Mining Operators Pay RIGWAT

To accomplish our objective, we compared DOR information on companies paying RIGWAT with Department of Environmental Quality information on the number of operators with excavations for calendar year 2006. From our statistical sample of 42 files, we documented 19 private sector companies with active opencut mining permits. Of these, 16 operators reported excavating materials during 2006. However, when we compared this information with companies DOR reports paying RIGWAT, we noted differences. Our analysis indicates approximately 94 percent of sampled opencut operators are not paying RIGWAT. DOR reported collecting almost \$368,000 from opencut operators in 2006, but RIGWAT distributions to the program were approximately \$457,000. The difference is supplemented by RIGWAT collections from coal and other mining operations. Improving RIGWAT collections would result in a revenue increase to help fund agency operations and environmental cleanup activities. Increased revenues would help offset General Fund money appropriated for the program.

The Department Can Assist DOR With Identifying Opencut Mining Operators

While the Department of Environmental Quality is not responsible for collecting RIGWAT, it can assist with collections by providing DOR information about opencut mining operators who might be required to pay RIGWAT. The department requires operators to submit an annual report, which includes information about the number of opencut mines an operator has, as well as self-reported information about the volume of materials excavated during a calendar year. Providing annual report information to DOR would increase DOR's ability to identify opencut mining operators with producing mines. Additionally, section 15-38-105, MCA, requires operators to submit to DOR a

report of gross yield from a mine. The department should coordinate data-sharing with DOR to help identify opencut mining operators.

Coordination between agencies helps programs accomplish goals and objectives. Coordination between the department and DOR will enhance DOR's ability to collect RIGWAT. In turn, increased RIGWAT collections will increase deposits into the Reclamation and Development Account, which is the primary funding source for the Opencut Mining Program.

RECOMMENDATION #4

We recommend the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Improving the Management Information System

Good management information is critical for an effective internal control system. The department collects and maintains some management information in a database; however, we identified several deficiencies. First, the department does not appear to collect complete management information to effectively manage the program. We documented a number of examples of management information not collected that could be useful for management purposes. Although section 82-4-432, MCA, requires complete permit applications be processed within 30 days, the program does not collect information on when applicants submit all information needed to determine whether a permit should be issued. Another example is the department does not track and monitor inspection information, although this is critical to assess compliance with state law.

An Improved Database Would Enhance Management Capabilities

Comprehensive management information systems are essential to understanding program strengths and areas for improvement. For example, the department reports a backlog of approximately 260 pending applications, although our analysis indicates there were 68 applications actually pending program action as of November 2007. From a management perspective, the difference between reported and actual pending permit applications could require significantly different resolution strategies. Resolving a backlog of 260 pending applications might require increasing FTE. However, resolving a backlog of 68 pending applications might only require adjusting how existing resources



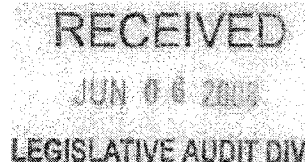
Montana Department of ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

June 6, 2008

Scott A. Seacat, Legislative Auditor
Legislative Audit Division
State Capitol
Helena, Montana 59620-1705



**Re: Improving Montana's Opencut Mine Permitting Process
Legislative Audit Division Report No. 08P-04 Dated June 2008**

Dear Mr. Seacat:

By this letter, I am transmitting the department's formal response to recommendations presented in the Legislative Audit Division Report No. 08P-04 "Improving Montana's Opencut Mine Permitting Process." The department agrees with all seven recommendations and plans to contract with an outside consultant specializing in business process improvement to assist our efforts in implementing the recommendations. The enclosed responses present the department's position, contemplated corrective action, and anticipated timeframe for implementing each recommendation.

Proposed timeframes reflect the pressing need for existing program staff to continue processing permit applications and perform related site inspections and environmental assessments while efforts to improve permitting procedures are underway. Timeframes also reflect the ongoing expenditure of staff time in relation to litigation on several opencut permit applications and involvement in preparations for the upcoming legislative session.

I will be available for the June 20 meeting of the Legislative Audit Committee, as will appropriate staff from my office and the Permitting and Compliance Division.

I would like to personally thank your office and the audit staff assigned to this project for their dedication and professionalism throughout the course of this audit. Their findings and recommendations have provided a valuable insight into the department's management regarding permitting activities performed by the Opencut Mining Program. Their findings will help us improve the program's operations.

Sincerely,

Tom Livers
Deputy Director

c: Richard H. Oppen, DEQ Director
Judy Hanson, PCD Administrator
Neil Harrington, IEMB Chief
Chris Cronin, IEMB

Due to the heated public controversy and legal conflicts associated with a number of permit applications the department processed recently, we understand operators and the public are, or will be, pursuing legislative initiatives to amend the Opencut Mining Act. As a result, requirements of this law are expected to change during the 2009 session. Therefore, the department does not anticipate fully implementing the new opencut policies and procedures until after the session concludes. At that point, the department intends to finalize the revised permitting process and conduct an extensive outreach effort to inform operators and the public of the new program requirements. The department will also consider any necessary rule changes after the 2009 legislative session.

Recommendation #3 – We recommend the department establish formal policy and procedures, and propose administrative rules clarifying the role of program personnel and operators in the opencut mining permitting process.

The department concurs with this recommendation. The department agrees with the concept of establishing general policy for staff regarding the nature of and limits to assisting applicants with their mining permit applications. The policy is anticipated to take the general form of providing applicants with guidance on which application forms and materials are needed, answering applicants' questions, and recommending resources for applicants to use to prepare permit applications. The department will establish this policy and begin educating operators about it by July 1, 2009. Full implementation may require an extended transition period of working with operators.

The department does not anticipate the need for rules on this matter, at least initially, but will consider that option in the future if that appears to be warranted.

Recommendation #4 – We recommend the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

The department concurs with this recommendation. The department will consult with the Department of Revenue (DOR) in early FY09 and provide that agency with a list of permitted operators and any other readily available information that the department has in its possession and that is requested by DOR.

Recommendation #5 – We recommend the department identify information needs and develop a system capable of addressing Opencut Mining Program operational needs.



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TO THE
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FINANCIAL-COMPLIANCE AUDIT

Department of Revenue

For the Two Fiscal Years Ended June 30, 2008

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Excess Vacation Leave

Due to a calculation error, seven department employees accumulated more vacation leave than state law permits.

Section 2-18-617(1), MCA, limits the amount of vacation leave an employee can accumulate and carry forward to twice the amount an employee earns in a calendar year. Vacation leave accumulated above this amount is considered excess and must be used by the employee within the first 90 days of the calendar year, unless an employee's written request for such leave is denied by the employing agency. If the employing agency denies the request, the excess vacation leave is not forfeited if used before the end of that calendar year. State law makes it the employing agency's responsibility to provide reasonable opportunity for an employee to use, rather than forfeit, excess vacation leave.

Department personnel have procedures to calculate the amount of excess vacation leave that needs to be taken or forfeited, but the procedures they followed for calculating excess vacation leave were flawed and the resources they used from the state's accounting system were designed for other purposes. The department's excess leave calculation understated the amount of excess vacation leave. As a result, seven employees had excess vacation leave balances at the end of the first pay period in calendar year 2008 that should have been forfeited December 31, 2007, but had not been forfeited as of May 27, 2008. These employees had accumulated excess vacation leave from prior years ranging from 3.62 to 79.82 hours, with a total value of \$9,013 at January 4, 2008. Not forfeiting the excess vacation leave hours in accordance with state law increases the department's liability for compensated absences.

RECOMMENDATION #5

We recommend the department revise procedures to ensure excess vacation leave is properly calculated and used by employees or forfeited in accordance with state law.

Tax Administration Issues

Section 15-1-201(1)(a), MCA, provides the department has general supervision over the administration of the assessment and tax laws of the state, except for gasoline and vehicle fuels taxes. During the course of our audit work, including follow-up on prior audit recommendations, we identified an area where we believe the department could improve

the administration of the tax laws, as discussed below. Our office also recommended during the performance audit "Improving Montana's Opencut Mine Permitting Process" (08P-04), that the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Notification of Nonfilers and Delinquent Filers

The department does not have adequate procedures to notify the Secretary of State of all corporation license tax nonfilers and delinquent filers, as required by section 15-31-523, MCA.

If a corporate license tax is not paid or if a return is not filed 11 months after the date of delinquency, section 15-31-523, MCA, requires the department to transmit the name of the corporation to the Secretary of State so the public can be notified the corporate powers, rights, and privileges of domestic corporations are suspended and the rights of foreign corporations to do intrastate business in this state are forfeited. If any domestic corporation fails for five consecutive years to either file a return or to pay the corporation license tax, this statute requires the department to notify the corporation by mail that the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within 60 days. If the corporation does not file all delinquent reports and pay all delinquent corporation license taxes, the statute requires the department to certify this fact to the Secretary of State, the corporation be dissolved, and the public notified of the corporation's dissolution.

As discussed in the prior audit, the department does not notify the Secretary of State when a corporation does not file or is delinquent in filing, unless department personnel know the corporation is currently operating in Montana and refuses to file a corporation license tax return. Department personnel do not check with the Secretary of State or its website to see whether the corporation is active. Department personnel indicated that the benefit of trying to comply with this statute is minimal, as past history has shown most corporations that do not file returns have already voluntarily dissolved or are no longer active. They also were concerned about the potential risk of suspending a corporation that had filed and the related cost of time to correct such an error. Department personnel estimated the cost to the department of complying with this law is about \$13,000 and the cost to the Secretary of State is about \$24,000 for computer system enhancements.